

**MINUTES
URBAN COUNTY PLANNING COMMISSION
SUBDIVISION ITEMS**

January 17, 2013

- I. **CALL TO ORDER** - The meeting was called to order at 1:33 p.m. in the Council Chambers, Urban County Government Building, 200 East Main Street, Lexington, Kentucky.

Planning Commission Members Present – Mike Owens, Chair; Eunice Beatty, Will Berkley, Carla Blanton, Lynn Roche-Phillips, Karen Mundy, Carolyn Plumlee and William Wilson (arrived at 2:38 PM). Patrick Brewer, Mike Cravens and Frank Penn were absent.

Planning Staff Present – Chris King, Director; Bill Sallee; Jim Marx; Tom Martin; Barbara Rackers; Chris Taylor; Cheryl Gallt; Dave Jarman and Denise Bullock. Other staff members in attendance were: Hillard Newman, Division of Engineering; Captain Charles Bowen, Division of Fire and Emergency Services; Jeff Neal, Division of Traffic Engineering; Tim Queary, Department of Environmental Quality and Tracy Jones, Department of Law.

- II. **APPROVAL OF MINUTES** – The Chair reminded the Commission members that the minutes of the November 8, 2012 and November 15, 2012, meetings had been previously distributed. He said that Ms. Plumlee had provide one correction on the November 8th minutes to the staff, and said that if there were no other changes, those minutes were ready to be considered at that time.

Action - A motion was made by Ms. Plumlee, seconded by Ms. Beatty and carried 8-0 (Cravens, Penn and Wilson absent) to approve the minutes of the November 8, 2012 and November 15, 2012, meetings.

- III. **POSTPONEMENTS OR WITHDRAWALS** – Requests for postponement and withdrawal will be considered at this time.

- a. DP 2012-89: NEWMARKET PROPERTY, PH 1, UNIT 10 (1/29/13)* - located at 1501 Deer Haven Lane (a portion of).
(Council District 12) **(EA Partners)**

Note: The Planning Commission postponed this plan at their November 8, 2012 and December 13, 2012, meetings. This property requires the posting of a sign and an affidavit of such.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan and required street tree information.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Greenspace Planner's approval of the treatment of greenways and greenspace.
8. Dash all adjacent property lines.
9. Provided the Planning Commission makes a finding that the plan complies with the provisions of the EAMP.
10. Denote that exaction fee amounts shall be determined at the time of Final Record Plat, to the approval of the Division of Planning.
11. Discuss the continuation of storm water management improvements proposed for the adjacent property.
12. Discuss status of constructed wetlands per the EAMP.
13. Discuss possible need for tree protection areas on Lots 20-25 & 30-34, and possible easement conflicts.
14. Discuss proposed KU easement conflict with proposed lotting.

Representation – Richard Murphy, attorney, was present representing the applicant, and requested postponement of DP 2012-89: NEWMARKET PROPERTY, PH 1, UNIT 10 to the February 14, 2013, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Ms. Beatty, seconded by Ms. Plumlee and carried 7-0 (Brewer, Cravens, Penn and Wilson absent) to postpone DP 2012-89: NEWMARKET PROPERTY, PH 1, UNIT 10 to the February 14, 2013, Planning Commission meeting.

- b. ZDP 2012-76: DEERFIELD SHOPPING CENTER (1/17/13)* - located at 1949 Nicholasville Road.
(Vision Engineering)

Note: The Planning Commission indefinitely postponed this plan at their September 27, 2012, meeting, pending the zoning decision by the Urban County Council. The Urban County Council approved the zone change request at their November 27, 2012, meeting. As a result, the postponed zoning development plan now requires Commission consideration.

The Subdivision Committee Recommended: **Postponement**. There are issues with the screening and buffering adjacent to a residential subdivision.

* - Denotes date by which Commission must either approve or disapprove item.

Should this plan be approved, the following conditions should be considered:

1. Provided the Urban County Council rezones the property B-3; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Denote: No building permit shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Denote current floodplain information on plan.
8. Denote record plan name.
9. Clarify site statistics (floor area).
10. Verify required parking for restaurant (square footage/seating ratios).
11. Addition of Nicholasville Road street cross-section and Collins Lane access easement cross-section.
12. Denote proposed and existing storm water sewer locations to the approval of the Division of Water Quality.
13. Resolve utility line and proposed building conflicts.
14. Denote proposed storm water detention location to the approval of the Division of Water Quality.
15. Discuss tree protection, landscaping and buffering perpendicular to Nicholasville Road.
16. Discuss building height adjacent to residential uses.
17. Discuss disposition of existing improvements in Nicholasville Road right-of-way.
18. Discuss timing of revisions to the current FEMA floodplain.

Representation – Bruce Simpson, attorney, was present representing the applicant, and requested postponement of ZDP 2012-76: DEERFIELD SHOPPING CENTER to the February 14, 2013, Planning Commission meeting. He stated that they were still discussing this plan with nearby neighbors, and they wished to continue to do so.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

Action - A motion was made by Ms. Plumlee, seconded by Ms. Roche-Phillips and carried 7-0 (Brewer, Cravens, Penn and Wilson absent) to postpone ZDP 2012-76: DEERFIELD SHOPPING CENTER to the February 14, 2013, Planning Commission meeting.

- c. PLAN 2013-4F: GLEN AT LOCHDALE, UNIT 4-F (2/24/13)* - located on Golden Trophy Trail, east of Winthrop Drive.
(Council District 9) **(Eagle Engineering)**

The Subdivision Committee Recommended: Postponement. There were questions regarding the difference in utility easements between the record plat and the approved development plan.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
8. Addition of Man O' War Boulevard cross-section.
9. Denote: This property shall be developed in accordance with the approved final development plan.
10. Addition of "Record" to the plan title.
11. Dash boundary lines of adjacent property (to clarify extent of plat).
12. Label access cross-sections on plan face.
13. Addition of a list of private utilities.
14. Correct numbering in the general notes (note #7).
15. Discuss status of approved Development Plan/Preliminary Subdivision Plan.

Staff Comment – Mr. Martin said that the applicant's representative was not present for this case, and for that reason, requested postponement of PLAN 2013-4F: GLEN AT LOCHDALE, UNIT 4-F to the February 14, 2013, Planning Commission meeting.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request for postponement. There was no response.

* - Denotes date by which Commission must either approve or disapprove item.

Action - A motion was made by Ms. Blanton, seconded by Ms. Mundy and carried 7-0 (Brewer, Cravens, Penn and Wilson absent) to postpone PLAN 2013-4F: GLEN AT LOCHDALE, UNIT 4-F to the February 14, 2013, Planning Commission meeting.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, January 10, 2013, at 8:30 a.m. The meeting was attended by Commission members: Will Berkley, Eunice Beatty, Mike Owens, Carolyn Plumlee and Karen Mundy. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Cheryl Galt, Chris Taylor, Barbara Rackers, David Jarman and Denise Bullock, as well as Captain Charles Bowen, Division of Fire & Emergency Services and Tracy Jones, Law Department. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

1. *All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
2. *All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

- A. **CONSENT AGENDA - NO DISCUSSION ITEMS** – Following requests for postponement or withdrawal, items requiring no discussion will be considered.

- Criteria:**
- (1) the Subdivision Committee recommendation is for approval, as listed on this agenda; and
 - (2) the Petitioner is in agreement with the Subdivision Committee recommendation and the conditions listed on the agenda; and
 - (3) no discussion of the item is desired by the Commission; and
 - (4) no person present at this meeting objects to the Commission acting on the matter without discussion; and
 - (5) the matter does not involve a waiver of the Land Subdivision Regulations.

- Requests can be made to remove items from the Consent Agenda:**
- (1) due to prior postponements and withdrawals,
 - (2) from the Planning Commission,
 - (3) from the audience, and
 - (4) from Petitioners and their representatives.

At this time, the Chair requested that the Consent Agenda items be reviewed. Mr. Sallee identified the following items appearing on the Consent Agenda, and oriented the Commission to the location of these items on the regular Meeting Agenda. He noted that the Subdivision Committee had recommended conditional approval of these items and the staff had recommended reapproval for the remaining item. (A copy of the Consent Agenda is attached as an appendix to these minutes).

1. PLAN 2013-1F: MAHAN PROPERTY, UNIT 2A (2/24/13)* - located at 2980 Man O' War Boulevard.
(Council District 9) **(EA Partners)**

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
8. Complete 25' floodplain setback on Lot 75.

2. PLAN 2013-2F: RIDDELL PLAZA, LOTS 1-22 (AMD) (2/24/13)* - located at 301-343 Burley Avenue.
(Council District 3) **(EA Partners)**

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Addition of access easement maintenance note.
8. Addition of access easement locations and dimensions.
9. Delete or clarify note #5.
10. Denote reciprocal access and parking on plan.

* - Denotes date by which Commission must either approve or disapprove plan.

11. Provided the Planning Commission makes a finding on the use of an access easement.
3. PLAN 2013-3F: COLDSTREAM RESEARCH CAMPUS, UNIT 6 (2/24/13)* - located at 1350 Bull Lea Road (a portion of).
(Council District 2) **(Strand & Associates)**

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection area(s) and required street tree information.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
8. Addition of building line on Lot 5.
9. Label all areas of zoning on the property and on adjacent property.
10. Correct zoning in site statistics.
11. Denote waiver approved by the Planning Commission and street maintenance agreement.
12. Resolve access across Lot 1 to L.T. Ruth Property.

4. PLAN 2013-5F: PRATT ADDITION, LOTS 11A & 11B (2/24/13)* - located at 633 and 635 Bellaire Avenue.
(Council District 1) **(Endris Engineering)**

Note: The purpose of this amendment is to subdivide one lot into two lots.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree protection area(s) and required street tree information.
 6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
 7. Complete adjoining property information (deed reference) for Lots 11 & 12.
5. DP 2013-1: HIGBEE MILL RESERVE (AMD) (2/24/13)* - located at 4250 and 4290 Harrodsburg Road (a portion of).
(Council District 10) **(EA Partners)**

Note: The purpose of this amendment is to construct 168 units and associated off-street parking.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and landscape buffers.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree preservation plan.
 6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
 7. Division of Fire Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
 8. Division of Waste Management's approval of refuse collection.
 9. Revise purpose of amendment note.
 10. Correct Planning Commission certification.
 11. Denote adjoining zoning information.
 12. Denote "farm gate" information on plan, to the approval of the Division of Fire.
 13. Resolve development of proposed duplex lot.
 14. Resolve timing of Stedman Lane dedication.
 15. Resolve building encroachment into drainage easement.
 16. Resolve pool deck encroachment into storm sewer easement.
6. DP 2013-2: WATTS FARM, TRACT 4 (AMD #5) (2/24/13)* - located at 420 and 430 Redding Road.
(Council District 4) **(EA Partners)**

Note: The purpose of this amendment is to revise the fitness facility footprint on tract B.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.

* - Denotes date by which Commission must either approve or disapprove item.

2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and landscape buffers.
 4. Addressing Office's approval of street names and addresses.
 5. Urban Forester's approval of tree preservation plan.
 6. Division of Fire Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
 7. Division of Waste Management's approval of refuse collection.
 8. Clarify whether or not "tennis courts" will remain.
7. DP 2013-4: PINNACLE, LOT 1 (AMD) (2/24/13)* - located at 1099 Duval Street.
(Council District 8) **(Midwest Engineering)**

Note: The purpose of this amendment is to depict the proposed signage for office building on Lot 3, as required by conditional zoning restrictions, and to reconfigure the free-standing sign on Tates Creek Road.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
 2. Urban County Traffic Engineer's approval of street cross-sections and access.
 3. Building Inspection's approval of landscaping and landscape buffers.
 4. Addressing Office's approval of street names and addresses.
 5. Division of Fire Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
 6. Addition of dimensions for access point.
 7. Replace free-standing sign information depicted with that for FOP sign that has been erected.
8. DP 2011-91: RED MILE MIXED-USE DEVELOPMENT (4/9/13)* - located at 1200 Red Mile Road.
(Council District 11) **(Vision Engineering)**

Note: The Planning Commission originally approved this plan on November 10, 2011, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Greenspace Planner's approval of the treatment of greenways and greenspace.
9. Division of Fire's approval of emergency access and fire hydrant locations.
10. Division of Waste Management's approval of refuse collection.
11. Correct cul-de-sac detail conflict with plan.
12. Addition of notes regarding traffic signals to the approval of the Division of Traffic Engineering.
13. Revise note #10 to read: "When development of 50% of the commercial floor area is complete, developer shall widen Red Mile Road and make improvements at the intersection of Versailles Road and South Broadway.
14. Clarify site statistics to specifically read 168 units.

Note: The applicant now requests reapproval of the plan.

The Staff Recommends: **Reapproval**, subject to the original conditions, revising the following:

9. Division of Fire's Water Control Office's approval of emergency access and fire hydrants, fire department connections and fire service features locations.
9. DP 2012-114: GLEN AT LOCHDALE, UNIT 4 (MINOR AMD) (3/12/13)* - located at 3600 Winthrop Drive.
(Council District 9) **(EA Partners)**

Note: The purpose of this minor amendment is to shift the building and envelopes of apartment buildings 3, 5 and 6; to relocate the parking spaces; to reflect revised property boundaries and delete note #6.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Delete TPA along east property line.
2. Denote that compliance with the required tree canopy will include tree plantings along the east property line, to the approval of the Urban Forester.
3. Revise Commission's certification to include date of approval.

* - Denotes date by which Commission must either approve or disapprove plan.

In conclusion, Mr. Sallee said that the items identified on the Consent Agenda could be considered for conditional approval at this time by the Commission, unless there was a request for an item to be removed from consideration by a member of the Commission or the audience to permit discussion.

Consent Agenda Discussion – The Chair asked if anyone in the audience or on the Commission desired further discussion of any of the items listed on the Consent Agenda. There was no response.

Action - A motion was made by Ms. Beatty, seconded by Ms. Roche-Phillips and carried 8-0 (Cravens, Penn and Wilson absent) to approve the items listed on the Consent Agenda.

- B. AMENDMENT TO THE AGENDA** – The Chair asked the Commission to allow some discretion with the order of today's agenda to allow the other development plans listed to be heard before DP 2012-104: LAKEVIEW ESTATES, UNIT 2B, BLKS J & K, UNIT 2E (AMD).

Action - A motion was made by Ms. Roche-Phillips, seconded by Ms. Mundy and carried 7-0 (Brewer, Cravens, Penn and Wilson absent) to allow the Chair to amend the agenda and the change the order of today's meeting.

- C. PERFORMANCE BONDS AND LETTERS OF CREDIT** – Any bonds or letters of credit requiring Commission action will be considered at this time. The Division of Engineering will report at the meeting.

Action - A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 7-0 (Brewer, Cravens, Penn and Wilson absent) to approve the release and call of bonds as detailed in the memorandum dated January 17, 2013, from Ron St. Clair, Division of Engineering.

- D. DISCUSSION ITEMS** – Following requests for postponement, withdrawal and no discussion items, the remaining items will be considered.

The procedure for these hearings is as follows:

- Staff Report(s), including subcommittee reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum OR 3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Commission discusses and/or votes on the plan.

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the meeting. The Chair will announce his/her decision at the outset of the hearing.

1. DEVELOPMENT PLANS

- a. DP 2013-5: MANCHESTER DEVELOPMENT (AMD) (2/24/13)* - located at 922, 926 and 930 Manchester Street.
(Council District 2) **(Barrett Partners)**

Note: This property requires the posting of a sign and an affidavit of such. The purpose of this amendment is to add 922, 926 and 930 Manchester Street for a new building as part of this Adaptive Reuse Project.

The Subdivision Committee Recommended: **Postponement**, due to the number of conditions recommended for this plan.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
8. Division of Waste Management's approval of refuse collection.
9. Correct purpose of amendment note.
10. Clarify the area of amendment.
11. Dimension sidewalks.

* - Denotes date by which Commission must either approve or disapprove item.

12. Denote construction access point location.
13. Addition of height of building.
14. Clarify possible parking conflict with canopy supports.
15. Correct Commission's certification date.
16. Identify property boundaries with solid lines (except for off-site parcels).
17. Correct note #1.
18. Clarify site statistics, including required and provided parking.
19. Clarify proposed uses, including square footage and parking requirements.

Staff Presentation – Ms. Gallt presented the amended final development plan for Manchester Development, located at 922, 926 and 930 Manchester Street. She directed the Commission's attention to the rendering, and oriented them to the overall area and to the surrounding street system. She said that the subject property is located just off Oliver Lewis Way, between Tarr Trace (aka Pine Street) and Willard Street. She then said that the subject property is zoned B-4, and the purpose of this amendment is to add a new building as part of the Adaptive Reuse Project. She added that the new building would be for a catering business, as well as for a pub.

Ms. Gallt directed the Commission's attention to the staff handouts, and said that the Subdivision Committee had recommended postponement of this request, due to the number of conditions listed on the agenda for this development plan. She then said that the applicant had submitted a revised Development Plan to the staff that had addressed the deficiencies and issues previously identified by the Subdivision Committee. Therefore, the staff can now recommend approval of this request, subject to the following revised requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Division of Fire, Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
8. Division of Waste Management's approval of refuse collection.
9. ~~Correct purpose of amendment note.~~
10. ~~Clarify the area of amendment.~~
11. ~~Dimension sidewalks.~~
12. ~~Denote construction access point location.~~
13. ~~Addition of height of building.~~
14. ~~Clarify possible parking conflict with canopy supports.~~
15. ~~Correct Commission's certification date.~~
16. ~~Identify property boundaries with solid lines (except for off-site parcels).~~
17. ~~Correct note #1.~~
9. 18. Clarify site statistics, including required and provided parking.
10. 19. Clarify proposed uses, including square footage and parking requirements.

Ms. Gallt noted that the applicant had submitted documentation, via an email, which she distributed to the Commission, which shows the breakdown for the required and provided parking (condition #9) on this development plan.

Representation – Tony Barrett, Barrett Partners, was present, and said that they are in agreement with the staff's revised recommendations and requested approval. He added that they have the appropriate documentation for the posting of a sign and the required affidavit.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Mr. Berkley, seconded by Ms. Beatty, and carried 7-0 (Brewer, Cravens, Penn and Wilson absent) to approve DP 2013-5: MANCHESTER DEVELOPMENT (AMD), subject to the revised conditions as presented by the staff.

- b. DP 2013-7: NEWMARKET PROPERTY, UNIT 7 & A PORTION OF UNIT 1 (AMD) (3/26/13)* - located at 1321 and 1201 Deer Haven Lane. (Council District 12) **(EA Partners)**

Note: This property requires the posting of a sign and an affidavit of such. The purpose of this amendment is to increase the number of single family lots, reduce the number of townhouses and to revise certain plan notes.

The Subdivision Committee Recommended: **Postponement**, due to the number of conditions recommended for this plan.

* - Denotes date by which Commission must either approve or disapprove plan.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan and required street tree information.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire, Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
9. Division of Waste Management's approval of refuse collection.
10. Denote reference to adjoining properties.
11. Denote construction access.
12. Denote pedestrian access and walkways to all townhouses.
13. Denote street cross-sections on plan.
14. Denote height of townhouses.
15. Denote source of contours on plan.
16. Provide list of private utilities.
17. Denote street frontage in site statistics.
18. Denote square footage of streets in site statistics.
19. Denote address of property in title block.
20. Resolve building setback along Meadow Croft Park.
21. Provided the Planning Commission makes a finding that the plan complies with the EAMP.

Staff Presentation – Mr. Jarman presented the amended final development plan for Newmarket Property, Unit 7 & a portion of Unit 1, located at 1321 and 1201 Deer Haven Lane. He noted that the staff had received a revised submission on January 14th, which addressed some of the conditions associated with this plan. Mr. Jarman directed the Commission's attention to the rendering on display, and oriented them to the overall area and to the surrounding street system. He said that the subject property is located just off Polo Club Boulevard and Deer Haven Lane, along Stolen Horse Trace.

Mr. Jarman said that with the revised submission for this plan, the staff can now recommend approval, subject to the following revised requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan and required street tree information.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire, Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
9. Division of Waste Management's approval of refuse collection.
- ~~10. Denote reference to adjoining properties.~~
10. 11. Denote Revise note #14 to indicate construction access to Deer Haven Lane will only be via "existing driveway."
11. 12. Denote pedestrian access and walkways to all townhouses from rear oriented garages.
- ~~13. Denote street cross-sections on plan.~~
12. 14. Denote height of townhouses and size of "optional sunroom" in development standards.
- ~~15. Denote source of contours on plan.~~
- ~~16. Provide list of private utilities.~~
- ~~17. Denote street frontage in site statistics.~~
- ~~18. Denote square footage of streets in site statistics.~~
- ~~19. Denote address of property in title block.~~
13. 20. Resolve building setback along Clarify tree preservation in open space (Lot 63) adjacent to Meadow Croft Park.
14. 21. Provided the Planning Commission makes a finding that the plan complies with the EAMP.

Mr. Jarman said that the applicant still has a few cleanup items to address, which include revising note #14 to indicate that a construction access to Deer Haven Lane will only be through an existing driveway; denoting that the pedestrian access and walkways to all townhouses would be from the rear oriented garages; denoting the height of townhouses and size of "optional sunroom" in the development standards; and clarifying the tree preservation in open space (Lot 63) adjacent to Meadow Croft Park.

Mr. Jarman then said that the staff finds that the amended Final Development Plan is in compliance with the Future Land Use, Community Design, and Infrastructure elements of the Expansion Area Master Plan for the following reasons:

1. The proposed townhouse\single family detached development is an allowable use, and is within the density recommended by the EAMP.
2. The applicant has designed this townhouse development to face all of the public streets, serving the new townhouse units by way of a private alley to the rear. The applicant will integrate the townhouse units with the existing single family residential development in the area, while creating pedestrian corridors to the proposed open spaces that all residents in the neighborhood will be able to enjoy.
3. The EAMP requires a sanitary sewer trunk line on the subject property, which has been built and dedicated to the Urban County Government.

Representation – Rory Kahly, EA Partners, was present, and said that they are in agreement with the staff's revised recommendations and requested approval.

Staff Comment – Mr. Sallee noted that the staff had received the appropriate affidavit for the posting of a sign on this property.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. There was no response.

Action - A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 7-0 (Brewer, Cravens, Penn and Wilson absent) to approve DP 2013-7: NEWMARKET PROPERTY, UNIT 7 & A PORTION OF UNIT 1 (AMD), subject to the revised conditions as presented by the staff.

The Chair confirmed that the motion included the Planning Commission making a finding that the plan complies with the provisions of the EAMP.

- c. DP 2013-8: ANDERSON 2 SUBDIVISION (3/26/13)* - located at 425 Chilesburg Road.
(Council District 7) **(Barrett Partners)**

Note: This property requires the posting of a sign and an affidavit of such. The purpose of this amendment is to add townhouses to the development.

The Subdivision Committee Recommended: Approval, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers and floodplain information.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Greenspace Planner's approval of the treatment of greenways and greenspace.
8. Division of Fire, Water Control Office's approval of fire hydrants, fire department connections and fire service features locations.
9. Division of Waste Management's approval of refuse collection.
10. Clarify proposed lotting for townhouse units.
11. Denote typical townhouse lot size.
12. Provided the Planning Commission makes a finding that the plan is in compliance with the EAMP.
13. Provided the Planning Commission makes a finding on the access easement.
14. Discuss note #19 and EAMP compliance (stormwater).
15. Discuss the need to increase the landscape buffer along the townhouse property line.
16. Discuss timing of wetlands to be constructed on the subject site.

Staff Presentation – Mr. Martin presented the final development plan for Anderson 2 Subdivision, located at 425 Chilesburg Road. He directed the Commission's attention to three aerial photographs, and oriented them to the overall area and to the surrounding street system. He noted the location of Hays Boulevard and Chilesburg Road, as well as the location of the Gess Property. He then noted that the subject property is located in the curve of Chilesburg Road, adding that there is a detention basin that is associated with the Gess Property. He pointed out the tree line that is near Jacobson Park, and the floodplain that extends from the Gess Property through the Anderson 2 Subdivision into the Jacobson Park reservoir. He said that that, in reviewing these photographs, the floodplain is shown to extend through the Chilesburg Road area down toward the Jacobson Park reservoir.

Mr. Martin then directed the Commission's attention to the rendering, and explained the proposed development depicted on the development plan. He noted the path of the floodplain that flows through the subject site, and said that the applicant is proposing to develop the front of the property with townhouses, the rear of the property would be single family detached units. He then said that the applicant would be constructing a local street (Tucker Crossing

* - Denotes date by which Commission must either approve or disapprove plan.

Way) that would intersect with Chilesburg Road and cross the floodplain to provide access to the entire development. He added that, at the rear of the site, a stub street would be constructed to provide a future connection to the adjoining property, eventually connecting with Ridge View Way.

Mr. Martin said that there were several issues with the layout of the townhouses, one of which was the side yard setback per the A-U requirements. He then said that the revised submittal has removed most of that conflict with the exception of one unit. He noted that Article 15 does allow averaging, and what the applicant had done is remove one townhouse, adding a single family lot at the rear of the development. This still maintains 38 dwelling units for this development. Mr. Martin said that common open space is provided extending 200 feet back from Chilesburg Road. This setback is associated with the Special Design Area under the EAMP requirements, and this setback is designed to maintain the rural character of the area.

Mr. Martin said that the staff was also concerned with the need to increase the landscape buffer along the property line near the townhouses. He said that it is unknown what will happen on the adjacent property, and the staff felt it was appropriate to have the landscaping increased to shield the townhouses from any new development that may occur. He noted that the applicant has submitted a landscape plan for this site, and that landscaping would screen the side of the townhouse units. The proposed landscaping would consist of medium or large trees, such as Pine trees, a continuous hedge or large shrubs and a 6-foot privacy fence. He said that many years ago, the applicant had planted evergreens along the property line, creating what is now an existing fencerow of trees; but the staff believes that adding more landscaping to this area would further shield the townhouses from the adjacent property, should development occur.

Mr. Martin directed the Commission's attention to the agenda, and noted that the Subdivision Committee had recommended approval of this development plan. He gave a brief explanation of the conditions, and noted that conditions #1 through #9 are typical standard "sign-offs" from the different local government divisions, and conditions #10 and #11 are clean-up items. He then said that, since this development is in the Expansion Area, the Planning Commission must make a finding that the plan is in compliance with the EAMP. He added that the development will be fronting on a public street; however, the townhouse units would actually front on an access easement. Therefore, the Planning Commission would also need to make a finding that the access easement is appropriate.

Mr. Martin said that when this proposal was first submitted there were three discussion items associated with this proposal, but the staff had received a revised submission on January 16; and in conjunction with discussions and meetings with the applicant and LFUCG staff, the staff is recommending the following revisions:

- ~~14. Discuss note #19 and EAMP compliance (stormwater).~~
- 14. 15. Discuss the need to increase the landscape buffer along the townhouse property line. Denote the approval of the applicant's proposed landscape buffer along the townhouse property line, and revise note 13 on the development plan to state that the proposed 6' privacy fence is an acceptable alternative to the agricultural fencing required by Article 6-3(b) of the Land Subdivision Regulations.
- ~~16. Discuss timing of wetlands to be constructed on the subject site.~~

Mr. Martin said that Article 6-3(b) of the Subdivision Regulations requires a fence to be provided between two properties if the adjoining parcel is zoned agricultural and used for agricultural purposes. He then said that the applicant is proposing a standard wire fence along the single family lots, and that fence would be installed prior to those lots being recorded. However, the applicant is proposing a 6-foot privacy fence for the townhouse units, and if the Commission accepts the applicant's proposal, it would serve in lieu of the required wire agricultural fence. He said that the privacy fence should be installed prior to the building permits being issued for the townhouses; and to ensure that this is done, the staff is recommending that note #13 on the development plan to be revised.

Mr. Martin said that conditions #14 and #16 speak to the wetland discussions that are associated with the EAMP. He then said that the Stormwater Management Plan in Expansion Area 2 has designated wetlands to be constructed in order to treat the stormwater runoff from the surrounding developments. These designated wetlands would run from Chilesburg Road to the Jacobson Park reservoir. He then said that, in reviewing the various elements of the EAMP, and the proposed request, it does comply with the requirements of the EAMP. He noted that this area is zoned EAR-1 and the applicant is providing low density housing at 3.0 units per acre. Mr. Martin said that the Community Design Element for this site has been addressed through the Special Design Area (SDA), which establishes the required 200' setback from Chilesburg Road. He then said that the infrastructure element has been met with the stormwater facility located in the floodplain, which is part of the greenway for the entire 2c portion of the Expansion Area. He added that the applicant would be constructing a trail throughout the greenway to link the other developments with Jacobson Park. Mr. Martin said that the designated wetlands are part of the EAMP, and the Stormwater Management Plan does identify the location of the wetlands. He added that these wetlands have been quantified: a cost has been associated with those wetlands, and the design criteria has been established. However, due to the nature of wetlands they are primarily a water quality feature. He said that there are existing wetlands in the area, four other wetlands would be created that would be contiguous to each other. He then said that the applicant will pay the exaction fees for this development, and those funds would be used to construct the entire wetland area at one time.

He added that the time frame for the constructed wetlands is unknown due to the intervening property between the Anderson Property and the Gess Property.

Mr. Martin directed the Commission's attention to the floodplain map, and said that there is a pond located in the flood area, noting that it was the staffs' understanding that this pond has been filled with debris. He then said that, should this debris interfere with the construction of the wetlands, that material will be removed. This is standard with the permitting process and it is standard with the construction permit. He noted that the staff does not know the reasoning behind the pond being filled with the various materials, but it can be dealt with under the permitting procedures. He said that, when working in the floodplain, the applicant will need to obtain the proper permits from the local, state and federal agencies.

Mr. Martin said that the staff is recommending approval of the applicant's request, subject to the conditions listed on today's agenda, deleting conditions #14, #15 and #16, and adding a new condition #14 to read: "Denote the approval of the applicant's proposed landscape buffer along the townhouse property line," Note #13 should be revised on the development plan to state that the proposed 6' privacy fence is an acceptable alternative to the agricultural fencing required by Article 6-3(b) of the Land Subdivision Regulations.

Mr. Martin then said that the staff believes that the proposed use of an access easement is appropriate, for the following reason:

1. Allowing these townhouse lots to be accessed only via an access easement is appropriate for the proposed development and is consistent with the housing and design goals of the EAMP.

Mr. Martin added that the Final Development/Preliminary Subdivision Plan for the Anderson 2 Subdivision is in compliance with the Future Land Use and Community Design elements of the Expansion Area Master Plan for the following reasons:

1. The proposed single-family attached and detached residential land use and proposed development standards are in compliance with the future land use element of the EAMP.
2. The proposed residential land use and community design elements are consistent with and complement the existing neighborhoods in the area, providing both linkages and well-defined boundaries in compliance with the Community Design Element of the EAMP.
3. The proposed plan recognizes the Special Design Area criteria associated with the rural designation of Chilesburg Road and has incorporated that into the development.

Mr. Martin noted that the Final Development/Preliminary Subdivision Plan for the Anderson 2 Subdivision is only in partial compliance with the Infrastructure element of the Expansion Area Master Plan for the following reasons:

4. All required sanitary sewer trunk line and collector street infrastructure (Hays Boulevard) to serve this development are in place.
5. While the required portion of the stormwater management plan for constructed wetland facilities will not be built with this development due to difficulties associated with the appropriate design and construction area for said facilities are available so they can be constructed along with others planned for adjoining properties.

Planning Commission Questions – Mr. Owens asked if the staff is satisfied with the wording of condition #14 as to when the fencing would be built. Mr. Martin said that the timing component could be added by the Commission to part of the note by stating that no building permits shall be issued for the townhouses until the fencing is in place. Mr. Owens then asked if the fencing is required for the single family units. Mr. Martin replied affirmatively.

Ms. Roche-Phillips said that the staff had mentioned constructing the wetlands, and asked if the destruction of the existing wetlands could be avoided or if there would be a "no net loss" by constructing the wetlands elsewhere. Mr. Martin said that there are identified wetlands to the north of Jacobson Park; but there are no identified wetlands on the subject property, which this is why constructed wetlands are being proposed. He added that the constructed wetlands would enhance the existing wetlands that are associated with the Jacobson Park reservoir.

Ms. Beatty asked if a development plan note should be added just in case the pond debris interferes with the construction of the wetlands. Mr. Martin said that, in speaking with the Division of Engineering, if the debris interferes with the constructed wetlands it would be removed. He then said that there is a geotechnical note on the development plan that addresses the steep slope areas, but it could be expanded to include the pond. Mr. Owens asked if that would include the cleanup of the pond, if it is needed. Mr. Martin replied affirmatively. Mr. Owens then asked if the geotechnical note is listed as a condition. Mr. Martin said that the geotechnical note is listed on the development plan and is part of the review process.

Representation – Richard Murphy, attorney, was present along with Tony Barrett, Barrett Partners, and Dennis Anderson, the applicant. He noted that this land was originally owned by the Tucker family and was sectioned off into 4 pieces. He said that his client had purchased two sections of the land, and Barlow Homes had purchased

one section, leaving a remnant piece that is currently owned by John Tucker. He noted that Mr. Tucker's property is between Anderson 2 Subdivision and the Gess Property that is fully developed.

Mr. Murphy said that the Planning Commission rezoned this land to EAR-1, and the approved road configuration was similar to the road configuration being proposed today. He then said that, at the Subdivision Committee meeting, a neighbor had stated that the road configuration would dam the floodplain, causing the water to back up onto their property. Mr. Murphy said that roads are allowed to cross floodplains; but before that can happen, the necessary permits must be obtained from the federal, state and local agencies. He then said that under the community plan for this area, the floodplain was designed to allow the water to back up on the adjacent properties. He stated that, whether or not the Commission approves this plan, water would still back up on the Tuckers' Property, as well as the adjacent properties, because this area is a floodplain.

Mr. Murphy said that, since the adjacent property is in an agricultural zone, this plan is required to have a 25-foot setback from the property line. The applicant has submitted a revised plan to the staff showing the 25-foot setback. He then said that this change has resulted in the loss of one townhouse and the addition of one single family unit to the rear. He added that, even though they are required to have the 25-foot setback, should the Tucker property develop, the 25-foot setback would not be applicable on his land, since the Anderson and Barlow Home properties are already zoned EAR. Mr. Murphy said that another issue that they are dealing with is the additional landscape screening along the townhouses. He said that the majority of the property line between the Anderson Property and the Tucker Property is straight; however, the property line near the townhouses has been notched to go around an existing barn and a storage building that is located on the Tucker property. He directed the Commission's attention to three pictures, and said that the condition of the barn is dilapidated, and the townhouses are adjacent to this area. He then directed the Commission's attention to two more photographs, and said that his client had planted a line of evergreen trees, which have matured, to create the landscape screening between these two properties. He added that his client does have a landscape plan for the townhouses, and they are installing the privacy fence in place of the farm fence. Mr. Murphy said that it is their understanding that there is a dispute between Mr. Tucker and Barlow Homes concerning the fence between their two properties. He then said that his client has decided not to enter into an agreement with Mr. Tucker because they have made it clear as to the type of fencing that would be used on this development.

Mr. Murphy said that there are two important issues concerning the constructed wetlands, the first being that the wetlands are not for water retention. He then said that wetlands act as a water quality feature to allow the water to be naturally filtered before entering the reservoir. The second issue is the timing of the constructed wetlands. He said that the wetlands could be piecemealed together or done at the same time. He then said that if the wetlands were constructed at the same time, it could be coordinated and done uniformly, which is important since the size of the wetlands is unknown at this time. Mr. Murphy explained that when builders/developers build in the EAMP area they can either receive credits for the improvements made or pay exaction fees to ensure that those improvements would be completed. He added that one way to obtain these credits is to design a way for the water to flow from the rooftops and the driveways into a grassy area. This would allow the water to be naturally filtered before entering the storm water drainage system. However, should the builders/developers decide they do not want to make those types of improvements, they are required to pay an exaction fee. These fees are placed in a fund that is used by the local government to ensure that the constructed wetlands are built at some point in the future.

Mr. Murphy said that, at the Subdivision Committee meeting, there were comments made about the old house on the property being demolished and disposed of in the pond. In speaking with his client, there was a house on the property that was being demolished, but during that process the workers found a beehive in the chimney. He said that they proceeded to pour kerosene down the chimney to get rid of the beehive; in turn, the house was set on fire. He added that when the fire department arrived, it was decided to let the house burn since it was being demolished anyway. Mr. Murphy said that, separately, the pond was filled in with dirt and rock, not construction debris. He then said that the pond would be checked as part of the road construction; and should there be debris in the pond, it would be dealt with at that time. He added that, to their knowledge, there is no construction debris in the pond.

Mr. Murphy said that they are in agreement with the staff's recommendation and requested approval of DP 2013-8.

Planning Commission Questions - Ms. Plumlee asked what type of buffer or fencing would be used on the reservoir side of the property. Mr. Anderson said that they have not decided what type of fence would be used, but they do want to provide pedestrian connectivity to Jacobson Park. Ms. Plumlee asked, since Jacobson Park is zoned agricultural, if there is there a specific fence to be used. Mr. Murphy said that the Ordinance states that a fence is required between two properties when the agricultural land is actively used. He then said that Jacobson Park is not actively being used for agricultural land; therefore, the fence is not required. However, Mr. Anderson has stated that he proposes to have a fence between these two properties.

Mr. Owens said that the staff had outlined the fencing along the agricultural side of the property, and the regulation does require a 5-foot diamond mesh fence with 6-inch top board to be installed. Mr. Murphy said that the regulations call for a 52-inch fence. Mr. Owens then asked if they are agreeable to the height and the timing of the

fence. Mr. Murphy replied affirmatively, and said that the Ordinance requires the fence to be installed prior to beginning construction. Mr. Owens asked if they are agreeable to the fence being installed along the townhouse prior to permitting. Mr. Murphy replied affirmatively.

Mr. Owens asked if there have been staff conversations with the Division of Water Quality concerning the pond issue. Mr. Martin said that when the staff heard the concerns with the pond, they asked DEM (Division of Emergency Management) if there were any complaints on file regarding the pond. He then said that they responded that they had investigated a complaint in the past and had determined that there were no environmentally hazardous materials involved and it was outside their jurisdiction. He added that the Division of Water Quality actively investigates pollution complaints; and should there be a problem with a site, it would be dealt with and cleaned up. Mr. Owens then asked if the staff is aware of a complaint being filed for this property. Mr. Martin replied negatively. Mr. Owens asked if the applicant would do whatever is needed to clean up the pond if it is needed. Mr. Murphy said that, under environmental laws, they would be obligated to clean up the pond if it is needed.

Ms. Beatty asked if the fencing, access and buffering along Jacobson Park would be handled through the normal approval process. Mr. Martin said that, as it was stated by the applicant and the Ordinance, fencing is not required along Jacobson Park because it is not being actively used for agricultural purposes. He then said that the Commission can impose the details for fencing in this area.

Note: Mr. Wilson arrived at this time.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. John Tucker, property owner of 451 Chilesburg Road, was present. He said that many things have been improved with this plan and he wanted to thank the staff and the applicant for their work. He then said that due to a wind storm, the barn had fallen down and there is an insurance claim pending on it.

Mr. Tucker said that he is concerned with the proposed privacy fence near the townhouses and requested it be 6-foot chain link fencing. This is for public safety reasons. He then said that, as far as this plan meeting the EAMP requirements, there is a restriction as to how many people can access Chilesburg Road. He noted that on a past development request a road stub had been installed leading to his property. He requested that an additional road stub in the townhouse area be added, creating a future connection to his property.

Mr. Tucker recapped by saying that he was in agreement with the applicant's proposal, but requested that the additional road stub be installed; the 6-foot chain link fence be used next to for the townhomes and the water quality issue be addressed.

Planning Commission Questions – Ms. Mundy clarified that there is a road stub at the rear of the adjacent property, and that Mr. Tucker is requesting an additional road stub leading to his property. Mr. Tucker said that there is a stub on the adjacent property for a future connection through his property to the next property. He said that he is requesting an additional stub between the townhomes leading to his property, as well. Mr. Martin said that there is a lot of development constraints associated with the Tucker Property. These include the 200-foot setback from Chilesburg Road, the required 60 percent open space in the design area and the floodplain. He said that it is hard to say what can happen, but the additional connection could be useful. He then said that the staff is comfortable with the future connection at the rear of the property since it would provide the connectivity for this area. He added that, if Mr. Anderson is agreeable to provide the additional stub street, a note could be added to the development plan that would address the future connection near the townhomes. He said that should the stub street be constructed, it would be constructed as a private access easement.

Ms. Roche-Phillips noted that the setback from Chilesburg Road is 200 feet, which Mr. Martin verified. Ms. Roche-Phillips said that she has concerns with a street connection being so close to Chilesburg Road and its location. She said that there is also a concern with the stub street that would then need to be made public, as well as having a public road run through the floodplain. This would place the repair cost on the city. Mr. Martin said that the EAMP encourages cluster development, and there are certain requirements that must be met, such as the 60 percent open space. He said that there are big challenges on the Tucker Property when it does develop.

Ms. Beatty clarified that the properties in this area would face development challenges. Mr. Martin replied that the challenges in this area include the 200-foot setback and the floodplain, not to mention the 50-foot gas transmission easement on the Tucker Property. Ms. Beatty said that the Commission should only consider the Anderson Property and how it is being proposed today, not what could happen on the adjacent property. Mr. Martin said that that is correct, but it is a valid request to have the Commission review the relationship between two properties. Mr. Anderson noted that Anderson Creek Lane is a second future road connection between these properties, which does lead to Chilesburg Road, which Mr. Martin confirmed.

Mr. Owens asked if Mr. Tucker had any further comments. Mr. Tucker said that he is requesting the additional stub street because the EAMP requirements restrict road access to Chilesburg Road.

Petitioner Rebuttal - Mr. Murphy said that, as it was mentioned by his client, there are multiple connections throughout this area leading to Chilesburg Road. He then said that they are proceeding as the road was planned, which is to provide connectivity. He added that a request was made to provide chain link fencing near the townhouse, and they prefer not to go along with that request, since most subdivisions now have deed restrictions concerning the type of fence used. He said that the wire fence is adequate for the single family units, and it would give this area a more agricultural look. Mr. Owens said that the applicant is proposing a 6-foot privacy fence for the townhouse area. Mr. Murphy replied that that was true.

Mr. Owens confirmed that the staff is recommending approval, subject to the revised conditions, as presented by the staff. He noted that the Commission would need to make a finding that the plan is in compliance with the EAMP, as well as make a finding on the access easement.

Action - A motion was made by Ms. Beatty, seconded by Ms. Mundy, and carried 8-0 (Wilson abstained; Brewer, Cravens and Penn absent) to approve DP 2013-8: ANDERSON 2 SUBDIVISION, subject to the revised conditions, as presented by the staff.

Note: A recess was declared by the Chair at 2:51 p.m. and the meeting re-convened at 2:57 p.m.

- d. DP 2012-104: LAKEVIEW ESTATES, UNIT 2B, BLKS J & K, UNIT 2E (AMD) (2/13/13)* - located at 475, 503, 517 & 519 Laketower Circle. (Council District 5) **(Barrett Partners)**

Note: The Planning Commission postponed this plan at their December 13, 2012, meeting. The purpose of this amendment is to add a six-story apartment building.

The Subdivision Committee Recommended: **Postponement**. There were questions regarding compliance with the height-to-yard ratio and conflict with proposed lotting.

Should this plan be approved, the following requirements should be considered:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire's approval of emergency access and fire hydrant locations.
9. Division of Waste Management's approval of refuse collection locations.
10. Addition of zoning information for duck pond area.
11. Clarify square footage used in floor area calculation.
12. Discuss proposed lotting conflict with building location.
13. Discuss compliance with required building height-to-yard ratio.

Staff Presentation – Mr. Taylor identified the final development plan for Lakeview Estates, Unit 2B, Blocks J & K, and Unit 2E on the Agenda, and noted that this property is located at 475, 503, 517 and 519 Laketower Drive. He said that the staff had distributed a collection of email correspondence to the Commission regarding this proposal, as well as the staff's revised recommendation and the applicant's exhibit concerning the floor-area ratio requirements. He directed the Commission's attention to a rendering of the final development plan, and oriented them to the subject property and to the nearby streets. He said that the subject property is located just off Richmond Road, near Lakeshore Drive. He added that the subject property runs along Laketower Drive, near Seton Road.

Mr. Taylor said that the Commission had previously approved a development plan for this site to allow the apartments to be altered, as well as approval of the townhouses near the duck pond. He then said that the purpose of this amendment is to add a five-story apartment building containing 118 units with 192 parking spaces. The access for this site, as well as the entrance for the parking structure, would be off Laketower Drive.

Mr. Taylor noted that the Subdivision Committee had recommended postponement of this development plan request for two reasons. He said that the first reason was due to the height-to-yard ratio for the R-4 zone. The issue with the height-to-yard ratio was primarily related to the area of the subject site that is zoned R-4. He noted that there is small portion of the lot that is zoned R-C. He explained that the height-to-yard ratio establishes how far the building would set back into the lot, and said that on the previous submission the height of the building had been set to be 70-foot tall, six-story building. He then said that the applicant had submitted a revised plan to the staff, which lowered the height of the building to 65 feet. This resulted in the loss of 1 story and 24 units, and changing the yard setback to 32.5 feet. He explained that even though the setback requirement for the R-4 zone is 20 feet, the height of the building also

* - Denotes date by which Commission must either approve or disapprove item.

establishes the setback requirement. The applicant has altered the building envelope and moved the building in a way to maintain the required 32.5 foot distance between any property lines.

Mr. Taylor directed the Commission's attention to the applicant's exhibit, and said that the floor area requirement is 0.7 for the R-4 zone. He then said that, on the previous submittal, the applicant did not indicate the floor area amount for each of the zones, adding that, for the purposes of the floor area, the applicant can only use the R-4 section of property. On the revised submission, the applicant has clarified the acreage for the R-4 section and the R-1C section. This allowed the staff to verify that the floor area proposed is only being used by the R-4 section. Mr. Taylor said that the staff exhibit shows the breakdown for the areas, as defined by the Zoning Ordinance, not being counted toward the floor area ratio. He said that these areas are square footages that can be deducted from the total gross building area and gross square footage to equal the total floor area ratio. He added that, since the proposed floor area ratio is 0.69, the staff felt it was necessary to verify the square footage of the areas that were being deducted to meet this requirement. He said that the staff was able to verify, dimensionally, that the balconies, interior courtyards and utility room deductions were accurate, and the total square footage and floor area does meet the R-4 requirements.

Mr. Taylor said that, with the applicant clarifying the floor area ratio and addressing the concerns regarding the height-to-yard ratio, the staff can now offer a revised recommendation on this development plan to the Planning Commission. He then said that the staff is recommending approval of the applicant's request, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree preservation plan.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire, ~~Water Control Office's~~ approval of ~~emergency access and~~ fire hydrants, fire department connections and fire service features locations.
9. Division of Waste Management's approval of refuse collection locations.
- ~~10. Addition of zoning information for duck pond area.~~
- ~~11. Clarify square footage used in floor area calculation.~~
- ~~12. Discuss proposed lotting conflict with building location.~~
- ~~13. Discuss compliance with required building height to yard ratio.~~

Representation – Richard Murphy, attorney, was present representing Allen Schubert and John Knapp, the applicants. He explained that Mr. Schubert has completed development work in Houston, Texas, as well as Louisville, Kentucky, and is the current owner and operator of the Beaumont Farm Apartments. His client is now the owner of the Lakewood Park Apartments. He added that his client has also rehabilitated the Lafayette Academy Building on South Upper Street.

Mr. Murphy briefly explained the history of this property, and said that this site was formerly the Sonnet Cove Apartments. The property was dilapidated and had numerous Code Enforcement violations. He presented several "before" pictures of the apartment complex, interior and exterior, to illustrate the degree of the rehabilitation that would be needed to bring this property back into compliance. He then said that there were multiple issues with this apartment community, and one of the circumstances of the property prevented any deliveries to be made by the nearby pizza restaurants. He then said that, after his client purchased the land, the property manager had visited each of the restaurants in an effort to convince the managers it was safe to begin delivering again. He said that another issue with the Sonnet Cove Apartments was the high criminal activity. At one point, the Sonnet Cove staff was robbed and would not continue to work unless there was a security guard present.

Mr. Murphy then directed the Commission's attention to the "after" pictures of the apartment complex, interior and exterior and said that his clients have rehabilitated many of the apartment units, and those units are now occupied by tenants. The improvements made to this property have been very well received by the neighbors and his clients are now on the third stage of the project with this request.

Mr. Murphy said that there was a newspaper article published in the Herald-Leader that spoke to the success story of this property. He mentioned different quotes made by LFUCG staff, and Council members, as well as the Police Department, concerning the project's success story. He added that there is also an article on the rehabilitation of the Lafayette Academy Building and what those improvements have done for the downtown area. He said that his client does quality redevelopment work; and with his experience and knowledge, he has a good track record both in Lexington and in other cities.

Mr. Murphy said that his client's plan for this site has always proposed a mid-rise apartment structure that would be targeted toward empty nesters, who want to travel. He then said that the development plan shown at the Subdivision Committee meeting had proposed a six-story tower; and, at that time, the issue was the floor area ratio. He added that, since the Committee meeting, his client has reduced the footprint and the height of the

building by 5 feet, resulting in a five-story structure. Mr. Murphy said that in 1970 the Planning Commission had approved a final development plan for an eight-story residential tower that was later changed to three-story garden apartments. He then said that, when reviewing the unit count from 1970 and the present, the Commission had approved 332 dwelling units and there were 331 units built. He added that when his client had purchased the apartment complex, there were 331 units with 632 bedrooms; and with the proposed development, there would be 331 units with 624 bedrooms. This proposal will generate the same amount of traffic as did the existing development. He said that the street system and the infrastructure were built in accordance with the original 1970 development plan.

Mr. Murphy said that the Commission must examine this proposal and determine whether or not they meet the requirements of the R-4 zone. He added that this proposal does meet every requirement, and the only conditions remaining are the typical standard "sign-offs" from the different local government divisions. He then said that there are no discussion issues and nothing needs to be resolved on this plan. Mr. Murphy said that the 2007 Comprehensive Plan calls for High Density land use for this property, which allows a density range from 10-25 units per acre. This proposal proposes 18 units per acre.

Mr. Murphy said that they understand that there is a concern from the neighborhood about the height of the building, but this proposal does meet the requirements of the Zoning Ordinance. He then said that when looking at a 3-story building with a hip roof, the height of that building could be 58 feet. They are proposing a five-story building with a flat roof, with a parapet wall at a height of 65 feet. He said that this property does slope downward from Laketower Drive toward the reservoir, so the view from each side would be different. He then said that the parking garage is proposed to be 3-story and will be attached to the apartment building.

Mr. Murphy said that there was also a concern with the light and shadows from this proposal, and a solar study could be performed, but it is not required by the Zoning Ordinance. He informed the Commission that they had the study done, but believes it to be irrelevant because the Ordinance considers light and openness through the open space requirements, the lot coverage, the floor-area-ratio and the setbacks. He added that that this is how Lexington governs openspace and light, and they meet those requirements. There is absolutely no provision to show a study of where shadows fall; but if the Commission wanted to discuss this issue, they were prepared to present their results. Mr. Murphy said that they would need a ruling from the Commission as to how to proceed with regard to the solar study. The Chair said that, at this point in time, the Commission asked that the study be held and see what is presented by the neighbors. He then said that the applicant could then state whether or not they are in agreement with those findings and could further discuss the issue at that time. Mr. Murphy clarified that the Commission was saying that shadow studies are not relevant. The Chair said that the Commission was not saying that they are or are not relevant. Mr. Murphy said that they did have a shadow study and they would hold off on presenting that study to the Commission. He then said that the building does cast a shadow, as does any building, but the shadow is not as bad as they were led to believe.

Mr. Murphy referenced two Kentucky Court of Appeal cases - Snyder v. Owensboro, KY, dated May 23, 1975 (no case number) and Wolf Pen Preservation Association, Inc. v. Louisville & Jefferson County Planning Commission, dated January 31, 1997, No. 96-CA-0558-MR. He said that after a property is zoned, the property owner has a legal right to develop that property as long as it is consistent with the requirements of the zone in which the property is located. He noted that, in the Snyder case, when looking at health, safety and welfare issues after the requirements of that zone are met is not something the Planning Commission considers - those issues are considered at the zone change stage, not at the subdivision plan stage. Mr. Murphy said that, in the case of Wolf Pen Preservation Association, Inc. v. Louisville & Jefferson County Planning Commission, the neighbors argued that it was not proper to build on the undeveloped land because that land had been acting as a buffer for their neighborhood, and the proposal was not compatible. He then said that the Court of Appeals had cited that the public body and the neighbors must "*accept the rights attendant to ownership of property, specifically the right to use property as one sees fit within the parameters of zoning legislation.*" He then said that the issues with compatibility are not addressed through a direct question but, rather, the request must comply with the zoning requirements for that location. He then said that they recognized the neighbors' concerns, but his client provides good quality work and he has been complimented on everything that he has developed in Lexington. He then said that this proposal is not a group residential project, and the design of this project was carefully thought out to ensure that the R-4 zoning requirements are being met. He said that the townhomes along the reservoir will be placed on the market, and will act as the buffer between the lake view and the apartment complex. He noted that the apartment units could be sold as condos, but at this time there is no market for that type of home right now. He then said that this project will be a high-end development with rent being set over \$1,000 per unit.

Mr. Murphy said that the design of the building will have a flat roof, and the garage is proposed to be three stories tall. He then said that the neighbors were concerned with the height of the building and asked his client to build 3-story units instead. The 3-story design had failed and they do not want to repeat that scenario again. He noted that, since the 70s, the parking requirements have changed and they are required to have at least 100 more parking spaces.

Mr. Murphy said that they are targeting the empty nester with this project. It would be geared to provide safe social activities inside a single building, as well as providing amenities, such as a swimming pool and more open space.

In conclusion, Mr. Murphy said that they had received a letter of support from Bill Lear, a resident of The Island, and Mr. Lear was very complimentary with his clients' work. He then said that Mr. Lear had stated that, while he respects the neighbors' opinions, he does not share them for a number of reasons: history has shown that initial negative reactions to other different developments in our area turned out not to be well founded; the diversity in housing types is a good thing, not a bad one, and it is something we have sought to do throughout the community increasingly in recent years and if these developers had come to the neighbors before they bought Lakeshore Village and proposed to buy it and do exactly what they have already done and now propose to do, we would have "thrown them a party". Mr. Lear continued, stating that he did not think that we should treat them any differently just because they didn't try to strike that deal beforehand.

Mr. Murphy stated that they are in agreement with the staff's recommendation and requested approval.

Audience Comment – The Chair asked if anyone in the audience wished to discuss this request. Darrin Duzyk, 775 Harbor Point, was present representing himself and the Board of Directors for the Lake Owners Estates, who currently owns Lakes 2 & 3.

Mr. Duzky submitted a packet for the Commission's review and noted that it includes a petition that lists the residents who are in opposition to this proposal. He then said that the people who signed this petition do reside on the Island, Lakeshore Village and in the Lakeshore corridor, as well as the Lakeshore neighborhood. He added that the homes in the general vicinity range from \$150,000 dollars and above, and the background of this area range from homemakers to contractors to doctors.

Mr. Duzky commented that the Planning Commission has the authority to reject this proposal, and the two court cases that were cited by Mr. Murphy are not applicable to this proposal. He said that one of the cases involves the development and density on a 57-acre tract in Jefferson County, while the other case involves the congestion and traffic issue in Western Kentucky. He then said that, as for the letter of support from Mr. Lear, Mr. Lear lives on the opposite side of the island, away from this proposal.

Mr. Duzky said that they had met with all the parties involved in this proposal, and the work that the applicant has done good and they appreciate his efforts; but even though they had said the building would be lowered 5 feet, there is still a concern with the height. He said that the applicant had stated that the roof would be flat, but the proposed development plan is at 58 feet and shows a hip roof.

Mr. Duzky concluded by quoting a section of the Mayor's Fresh Start Plan, and said that "*nothing is as important to the health and prosperity of the community as is the neighborhoods. It reflects our belief that neighborhoods define the quality of life in Lexington for most citizens.*" He requested additional time after Mr. DiGirolamo's presentation to conclude his presentation.

Joel DiGirolamo, 545 Laketower Drive, #118, was present representing himself, as well as LELA – Lakeview Estates Lake Association. He presented a PowerPoint presentation to the Commission showing different aerial views of this area and the reservoirs, as well as the wildlife. He said that this area is a gem for Lexington because there is no other like it inside the New Circle Road area, and it should be protected. He then said that this area provides canoeing and fishing for the residents, and the wildlife can be seen year round. He said that even though this area was originally zoned R-4 and a tower had been proposed, this area only has 2-story buildings that are well below the tree lines. He said that they are concerned with the height of the building being so massive that it would put off the animals from coming around again. He then said that they believe neighborhoods are very important for the city and they want to keep this area the way it currently exists.

Mr. DiGirolamo said that they are not in opposition to a 3-story building, but a 5-story building doesn't fit in with the general character of the neighborhood. He then said that, as for the roof type, a hip roof would cast more of a shadow than a flat roof. He added that a parking structure is not consistent with the neighborhood, and they are unsafe. He said that this proposal will destroy the viewshed and will place a significant amount of light on the lake at night. He then said that the increased traffic is another safety issue for this area, as is lower property values. He noted that there is a cycle of build and decay when the building changes, hands and the probability for decay significantly increases as the next owners fail to maintain the property. This has been witnessed most recently with Sonnet Cove Apartments and Pennington Place. He said that with the increased impervious surface to this area, it will cause drainage problems on the area and add more pollution to the lake.

Mr. DiGirolamo said that Article 21-4(d) allows the Planning Commission to modify or disapprove a development plan if it finds there are existing or potential flood, drainage, traffic, topographic, health, safety, nuisance or other similar problems relating to the development of the subject property. He then said that this project looks like a group residential project, and the only reason this project is not considered group residential is the way it is lotted. He added that if this project were lotted differently it would fall under Article 9-5(a) of the Zoning Ordinance, which

reads: *"the project shall be planned to properly blend with the surrounding property"*. This project does not blend with the surrounding properties. Mr. DiGirolamo demonstrated examples of different buildings within a 3-mile radius that are over three stories tall, to include the Chevy Chase area, the Richmond Road area and Alumni Drive.

Mr. DiGirolamo directed the Commission's attention to the solar study, and said that in the morning the proposed building would cast a shadow over many of the condos along Laketower Drive, adding that by the afternoon the shadow would be cast upon the houses to the northeast. He noted that the 3-story buildings that were previously there did not cast a shadow as this proposed project will.

Mr. DiGirolamo said that the two ways into this area are Manor Drive, which has now been closed to public traffic, and Seton Road. He then said that they are concerned that the additional units will increase the traffic in this area. He added that the demographic will change for this area. Before, the units provided low income housing and those tenants didn't have vehicles. Their travel was provided by LexTran. He said that Henry Clay High School is overcrowded, and the increase in students results in more traffic.

Mr. DiGirolamo showed several houses within the area that would be impacted with the 5-story proposal, and well as a schematic of the applicant's proposal. He said that the neighborhood is concerned that this proposal would impact the community and the character of the neighborhood. He then said that they had set up a meeting with Mr. Schubert on Friday (11/30/2012) to discuss their concerns and try to come to an agreement. They told Mr. Schubert that the neighborhood appreciates what they have done so far and they understand and respect his position. Mr. DiGirolamo said that during those discussions, they had realized that the applicant would not make an effort to compromise with the neighborhood and he had made no commitment to change his proposal.

Mr. DiGirolamo said that LELA has stated that this project is not consistent with the history and use of the surrounding neighborhoods and it detracts from the scenic and natural setting of the lakes. He then said that the Lakeshore Village HOA has stated that this project does not fit in with the general character of the neighborhood; it would cast a significant amount of light onto the lake at night and would reduce the property values in this area. He said that the recent Hampton Inn proposal on southland Drive only received 200 signatures and they have received over 278 signatures against this project.

Mr. DiGirolamo concluded by saying that there is a safety concern due to the increased traffic and a health concern due to the shading of the surrounding properties. He said that this project is a nuisance to the area because the character would be changing. This community considers this lake to be the gem of Lexington and they do not want to see it spoiled. He said that there are more than 278 homeowners who do not want this in their community, along with the neighborhood associations and the lake association. He added that the only person who wants this project to go forward is an out-of-town developer. He asked who gets to decide the character of a neighborhood – the neighbors or the developer.

Planning Commission Questions – Ms. Blanton clarified that the Hampton Inn was a zone change and this request is a development plan, the two of which are different. She said that this is the first time neighbors have come forward to complain about a development bringing higher income people into the neighborhood. She asked if the neighborhood would be agreeable to affordable housing instead. Mr. DiGirolamo said that Sonnet Cove at the end was 40 percent unoccupied, and most of the units were condemned. He then said that the low income housing wasn't too bad and it was reasonably maintained. They appreciate that the project would bring higher income to the neighborhood. Mr. Duzky said that it is "apples and oranges," adding that Sonnet Cove was bad. He said that the size of this structure is a different type of evil.

Audience Comment (cont.) – Pat Robinson was present representing the Lakeshore Homeowners Association. She said that their association is 100 percent against this development proposal, and asked that the Commission listen to the comments that have been made about their concerns.

Planning Commission Questions – Mr. Wilson asked how many signatures were listed on the petition. Mr. DiGirolamo said that they had received 278, plus 3 against this project. Mr. Wilson then asked how many houses were in this area. Mr. DiGirolamo said that he does not have that information, but there has been an overwhelming response against this project. Mr. Wilson said that he wanted to know the percent of the total neighborhood that is against this project. Mr. DiGirolamo said that he does not know the actual percentage, but it is high.

Rebuttal - The Chair said that since the solar study was introduced by the citizens, he asked if the applicant was in agreement with their findings. Mr. Murphy requested that they be allowed to demonstrate their findings on the overhead. The Chair agreed to Mr. Murphy's request. Mr. Murphy presented their shadow study to the Commission, and briefly explained their findings. He noted that Hampton Inn was a zone change request and this is a preliminary subdivision plat/final development plan request. He explained that the findings for the study show that even the 3-story building casts a shadow, as do the nearby houses. He then said that the 5-story building does not cast a shadow until right before the sun sets. Mr. Murphy said that they understand the neighborhood's concerns, but the threat of pollution to the lake because of construction will be an issue no matter what is built there, as the area has already been disturbed. He then said that, as far as the traffic, their target is the empty

nester, so there would not be any kids driving to Henry Clay. He added that Manor Drive was legally closed and is now a private drive, which would provide additional parking to this development. He further said that Manor Drive is open to the public and there is no obstructed traffic flow. Mr. Murphy said that the midrise building was shown on the master plan two years ago, and it has been mentioned in the newspaper. They have not tried to conceal this project.

Mr. Murphy said that there was a concern with the light reflecting on the lake, and in speaking with his client, the lights would be shoebox lights and would be positioned a certain way to help prevent the light from reflecting on the water. He then said that there was a comment made that a 5-story building would likely be a blighted building, but the examples that were provided are in good shape and doing well. He added that Sonnet Cove Apartments was a 3-story building that became a problem. Mr. Murphy said that the neighborhood is concerned with their property values, and his client had consulted Clarence Cundiff, who is a State certified appraiser. Mr. Murphy requested that the Commission allow Mr. Cundiff to speak to this concern. The Chair agreed. Mr. Cundiff said that he had reviewed the assessed values for Laketower Drive, and the range for this area, at a low is between \$80,000 and \$130,000. This is less than the Lexington median, which is between \$150,000 and \$160,000. He then said that there have been houses sold in this area that have generated an increase in prices between \$92,000 and \$112,000, and this leads him to believe that the property values would increase in this area.

Ms. Beatty asked if the original 1970 final development plan had proposed 8 stories. Mr. Murphy replied affirmatively. Ms. Beatty then asked if the Commission had approved the original proposal. Mr. Murphy said that the Commission had approved the 8-story building on March 26 and June 4, 1970.

Ms. Roche-Phillips asked if there is a statute of limitation on the Commission's approval. Mr. Murphy said that the 8-story building was approved for this area; and for the last 15 years, the Comprehensive Plan "motto" for this community has been "lets build up and not out." Every mayoral and council member's campaign has used that platform for the last 12 years. He said that the number of units is not increasing, and the height of the building is a little taller than a 3-story building; but they have met every requirement that is called for by the Ordinance. He then said that the staff has recommended approval of this request with only the administrative signoffs remaining. He added that the subject site is located in a high density zone.

Mr. Duzky noted that the architect who conducted the solar study is Richard Polk, EOP Architects, could not be present to further explain his findings. He said that, as for the 8-story building, he was not sure if that approval was for the entire lot, because with today's standards the setback and floor area ratio would not be met. He asked that the Commission not only consider the factual and objective criteria, but also consider the subjective criteria with regard to a 5-story building being built in their neighborhood or next door to them. He said that the Commission has been presented with a number of people who are in opposition to the changes that would come about with this size of a structure. He then said that the applicants or the investors do not live in this area, and the only person in support of this request lives on the opposite side of the island.

Planning Commission Questions - Mr. Berkley said that he is familiar with this project, and Mr. Schubert has done a very nice job; but he is somewhat concerned with the height of the building. He asked if what is seen on the ground today is the final grade because the neighbors have claimed that the site has been filled 3 to 4 feet. Tony Barrett, Barrett Partners, was present representing the applicant, and he said that the fill on site was the result of excavation from the buildings that were rehabilitated. He said that they had removed material along the foundations of these buildings and back-filled the area with drain tiles and other suitable material to help improve the drainage and the flooding in this area. He said that the material on site would need to be removed or redistributed. Mr. Berkley then asked how much more excavation would be needed and how much deeper it would be. Mr. Barrett said that what controls the elevation height for the first floor is the relationship to the road. He noted that there are two control points for this project - the first is the entrance to the building and the second is the entrance to the garage. These two points will determine what the finished floor elevation would be for both the building and the garage. He estimated that the elevation would be about a foot above the existing road.

The Chair said that the issue is the height of the building. In the beginning, the applicant was proposing a 6-story building at 70 feet tall, and now they are proposing a 5-story building at 65 feet tall. He asked if one floor was removed, how the 65 feet came about and there is room for anything else to be done. Mr. Murphy said that with the set points of control, the parapet wall at the top and each individual floor, they do not believe there is room to maneuver. He added that the overall height of the building is 5 feet lower. He said that the building has not been designed or built yet, so they can go lower, if necessary. He said that the 65 feet is the maximum height and gives them the flexibility if it is needed.

The Chair clarified that, with regards to the building, one story has been dropped, but the height of each floor could be raised. Mr. Murphy replied that that was possible.

Planning Commission Discussion - Mr. Berkley said that it sounds as if the height is going down from the existing grade, and it was stated that there is some flexibility to come down even lower. He asked if the applicant had any

idea as to how height could be taken off, if it becomes necessary. Mr. Murphy requested time to consult with his client. The Chair agreed.

Ms. Blanton said that this proposal has met every standard under the Zoning Ordinance and they are providing infill, which is what people have said they want. She said that this project has been praised by the Mayor's office and they are saving an area that has been blighted for many years. There is no reason for the Commission to vote against this request. Should the Commission do that, they are sending a chilling effect to anyone who wants to come into this community and invest money in a development. She said that it would be a huge detriment to Lexington and everything that the Commission is trying accomplish.

Ms. Plumlee thanked the residents for coming down to speak on this request. She said that she understands it is hard to accept a change to a neighborhood and hoped that before the meeting was over, a compromise could be reached with this development.

Ms. Roche-Phillips said that under Article 21, the Planning Commission has leeway in things that are at least superficially ministerial, if given the proper evidence. Ms. Jones said that, primarily this is a ministerial function, and this is an amended development plan. She said that the Planning Commission can review Article 21-7(e) of the Zoning Ordinance that speaks to the Commission making a finding, based upon factual evidence presented at today's hearing, that the plan has a negative impact on public health, safety or welfare, or alters the essential character of the development as it was originally approved by the Commission.

Mr. Murphy said that, in consulting with his client, they have determined that the height of the building can be lowered from 65' to 60' along Laketower Drive. He then said that they cannot determine what the height of the building would be at the rear of the property, but this would be the starting point. He added that this would be an additional 5 feet and would result in a total of 10 feet less height than the original proposal.

Ms. Roche-Phillips asked if the height is lowered if the height-to-yard ratio is also decreased. Mr. Taylor said that the height-to-yard ratio would be 30 feet, and the building would be able to move toward Laketower Drive an additional 2 feet. Ms. Roche-Phillips said that the net effect of lowering the height is more mass. Mr. Taylor said that this gives the applicant the ability to move the building closer to the property line within that ratio, but it doesn't mean that they would. He then said that the setback requirements would still need to be met for the R-4 zone.

Ms. Beatty said that there needs to be a compromise on this request. She said that she understands the neighborhoods' concerns, and the applicant has indicated that they are willing to lower the height to 60 feet. She asked if the residents could respond to the applicant's proposal. Mr. Duzky said that they had tried to discuss this issue with the applicant before coming in front of the Commission, and if the applicant is agreeable, they are willing to continue the discussion. He then said that they are at a disadvantage without their technical support present. He said that, by dropping the height from 70 feet to 65 feet, the height of each story would become 13 feet. Now they are suggesting removing an additional 5 feet to go back to two shorter stories. He said that, as opposed to a compromise, they request that the Commission pass on any vote in order to allow them to further discuss this issue with the applicant.

The Chair said that he appreciated everyone coming to the Commission meeting to voice their concerns. He said that this is a ministerial matter and the staff is recommending approval, subject to the standard signoffs from the different divisions in the government. He said that the issue comes down to the height of the building, traffic and the number of units, but there was a previous development already on site. He then said that most of the issues are not relevant; and in reviewing the viewshed for this area, the building would be 60 feet and he sees 60-foot trees in the photo. He added that this is a tough call; but at this point in time, he is in favor of the proposed request.

Action - A motion was made by Ms. Blanton to approve DP 2012-104: LAKEVIEW ESTATES, UNIT 2B, BLKS J & K, UNIT 2E (AMD), subject to the revised conditions, as presented by the staff.

Discussion of Motion – Mr. Wilson asked if the approval included the height of building being lowered to 60 feet. Ms. Blanton replied affirmatively, and said that she would like to amend her motion since the applicant had stated that they are agreeable to the 60-foot height limit along the Laketower Drive.

The motion was seconded by Ms. Mundy, and carried 8-0 (Brewer, Cravens and Penn absent).

V. COMMISSION ITEMS – The Chair will announce that any item a Commission member would like to present will be heard at this time.

A. INITIATION OF ZONING ORDINANCE TEXT AMENDMENTS – The staff will request initiation of four Zoning Ordinance Text Amendments related to Zoning Enforcement:

1. Vehicle Repairs Accessory to a Residential Use
2. Parking and Storage of Vehicles, Trailers, Equipment and Materials in Residential Zones

3. Temporary Signage
4. Zoning Enforcement Abatement Authority

Staff presentation – Mr. Marx said that the staff had presented these text amendments to the Commission at their November, 2012, Work Session. He then said that these text amendments are related to issues that have been problematic since the Division of Planning had taken over the responsibilities of the Zoning Enforcement at the beginning of 2012. He requested that the Planning Commission initiate these Zoning Ordinance text amendments in order to address these issues.

Action - A motion was made by Mr. Wilson, seconded by Ms. Plumlee, and carried 8-0 (Brewer, Cravens and Penn absent) to initiate the four Zoning Ordinance text amendments, as presented by the staff.

- B. **COMMISSION COMMENTS** – The Chair reminded the Commission members to give their financial statements to the staff before departing today's meeting.
- C. **UPCOMING WORK SESSION** – The Chair then reminded the Commission members of the upcoming work session scheduled for January 24, 2013.

VI. **STAFF ITEMS** – No such items were presented.

VII. **AUDIENCE ITEMS** – No such items were presented.

VIII. **NEXT MEETING DATES**

Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers	January 24, 2013
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (Phoenix Building)	January 30, 2013
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	January 31, 2013
Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (Phoenix Building)	February 7, 2013
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (Phoenix Building)	February 7, 2013
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers	February 14, 2013

IX. **ADJOURNMENT** - There being no further business, a motion was made to adjourn the meeting at 4:37 PM.

Mike Owens, Chair

Lynn Roche-Phillips, Secretary